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Robert W. Seiden
Court-Appointed Fund Distribution Administrator
Pursuant to the Order of The Honorable Judge
Pamela K. Chen of the United States District Court,
Eastern District of New York

November 14, 2024

VIA ECF

Hon. Pamela K. Chen
Courtroom 4F
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Securities and Exchange Commission v. Richard Xia, a/k/a Yi Xia et. al.
21-cv-05350-PKC-JAM:
The Fund Distribution Administrator's Interim Quarterly Fee Application

Dear Judge Chen:

I write pursuant to Your Honor's Order, dated July 26, 2024, appointing me as the Fund Distribution Administrator (the "**Distribution Administrator**") for all funds, including post-judgment interest, to be paid or collected from defendants (ECF 461; the "**Appointment Order**") pursuant to the Court's Final Judgment (ECF 460; the "**Final Judgment**"). In accordance with paragraphs 19 and 21 of the Appointment Order, I, Robert Seiden of Seiden Law LLP, the duly appointed Administrator, hereby respectfully request that this Court enter an Order approving the fees, costs, and expenses incurred during quarter three of 2024 (July, August, and September) (the "**Interim Application**"). A true and correct copy of the proposed form of Order Approving Administrator's Quarterly Fee Application is attached hereto as **Exhibit 1**.

Administrator's Efforts

On July 26, 2024, Your Honor appointed me as the Distribution Administrator for all funds collected from the Defendants and Relief Defendant in this action. Considering the complexity of the fund distribution and for the best interest of the investors, upon my appointment, my team and I started to interview professionals who are qualified to provide services in support of my performance of the duties as the Distribution Administrator. Between July 30, 2024 and September 10, 2024, my team and I consulted and interviewed four (4) candidates for Tax Administrator, four (4) candidates for accounting services, and seven (7) candidates for EB-5 Immigration Counsel.¹ Upon the final determination of these candidates' qualifications, I selected Heffler, Radetich & Saitta LLP ("**HRS**") as the Tax Administrator, Baker Donelson Bearman Caldwell & Berkowitz, P.C. ("**Baker Donelson**") as EB-5 Immigration Counsel, and Weaver and Tidwell, L.L.P. ("**Weaver**," together with HRS and Baker Donelson, "**Professionals**") for accounting services. My team and I further negotiated a discounted rate for the services of the Professionals in line with the best interest of the EB-5 investors. On September 19, 2024, I submitted a Letter Motion for Order Authorizing the Engagement of Professionals, detailing these Professionals' backgrounds

¹ The names of the candidates will be provided upon the Court's request.

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and the reasons I selected them to provide services in this matter. *See* ECF 475. Your Honor approved my motion on September 20, 2024. *See* ECF 476.

In addition to selecting the best candidates to support my performance as the Distribution Administrator, my team and I also spent time preparing a comprehensive Q&A² addressing the questions that most investors are concerned about, as well as responding to the inquiries from the investors. My team and I are currently working on an updated Q&A that will include more information concerning the progress of distribution and investors' rights. We will release our updated Q&A shortly. My team and I also established a channel for the investors to sign up in order to receive periodic updates from the Distribution Administrator's team.³

Most importantly, pursuant to Your Honor's Appointment Order, my team and I, together with our Professionals, worked diligently on the Proposed Distribution Plan ("Proposed Plan") which we finalized and submitted to the Court on November 1, 2024. The Proposed Plan was subsequently approved by the Court on November 5, 2024. In the course of preparing the Proposed Plan, my team and I consulted with Mr. Robert Divine, our EB-5 Immigration counsel, and discussed the potential solution that would be in the best interest of the investors, especially for those investors who still intend to pursue their immigration benefits under the EB-5 program. Considering the deadline for the Defendants and Relief Defendant to satisfy their monetary obligations under the Final Judgment is not until March 26, 2025, our Proposed Plan also addressed different scenarios, including the Defendants' and Relief Defendant's failure to comply with the Court's Final Judgment. The Tax Administrator, Mr. Dave White, also helped my team and I design the distribution methodologies with tax liabilities consideration in connection with the Fair Fund and income generated by the Qualified Settlement Fund. In summary, my team and I, with the support of these Professionals, completed the structuring and filing of the Proposed Plan which was approved by the Court.

Case Status

The Distribution Administrator is currently not in possession of any funds. Under the Court's Appointment Order, the funds are in the Court's CRIS account and will be used upon request. According to the most recent court filings, there is approximately \$42,649,961.08 in the Court's CRIS account. The Distribution Administrator has not made any fee application prior to this submission. Pursuant to the Appointment Order, the Court provided Defendants and Relief Defendant a 245-day deadline to comply with their monetary obligations, *i.e.*, until March 26, 2025. Thus, prior to March 26, 2025, we cannot be certain about the amount of funds that will be subject to distribution.

The Distribution Administrator's mandate is to distribute the funds collected according to the Proposed Plan, which the Court approved by Order dated November 5, 2024. Pursuant to that Order, the distribution is to be completed within two (2) years of the Order, *i.e.*, November 5, 2026.

² See https://drive.google.com/file/d/1UaN04-xrfECCMi36lQQb4Eg6WKk0-y5_/view

³ See <https://forms.office.com/r/R0WLQ8PB7f>

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According to the Distribution Administrator's interpretation of the Court's orders, the distribution of the settlement funds will be to only EB-5 investors. Thus, non-EB-5 investors are not eligible for distribution under the current plan. The Tax Administrator has agreed with this interpretation. We are not considering any creditors other than the EB-5 investors who invested or made capital contributions to the NCEs sponsored by Defendant Fleet, *i.e.*, MMCO, L.P., EMMCO Tower, L.P., EMMCO NQMC, L.P., EEGH, L.P., or EEGH II, L.P.

Pursuant to the Court's Appointment Order, the Distribution Administrator will not be in possession of any of Defendants' assets except for the cash they deposit to the Court. The Distribution Administrator's authority is limited to distributing cash that the SEC and Court collect from the Defendants and Relief Defendant.

Fees, Costs, and Expenses Incurred in Quarter Three of 2024

The time period covered by this Interim Application is the date I was appointed, July 26, 2024, through September 30, 2024. My team and I started to log in our time entries on July 29, 2024, and detailed invoices with descriptions of my team's and my work are attached as **Exhibit 2** to this application.⁴

The Administrator's Professionals are Heffler, Radetich & Saitta LLP, as the Tax Administrator; (2) Weaver and Tidwell, L.L.P for accounting services; and (3) Baker Donelson Bearman Caldwell & Berkowitz, P.C. as EB-5 immigration counsel. An Order authorizing the engagement of these professionals was issued on September 20, 2024. Hourly rates for Heffler, Radetich & Saitta LLP range from \$112-\$219. Hourly rates for Weaver and Tidwell, L.L.P range from \$125-\$500. Hourly rates for Baker Donelson Bearman Caldwell & Berkowitz, P.C. range from \$292-\$940. Full rate schedules for these professionals can be found in Seiden's letter to the Court, docket number 475.

There has not been a substantial increase (*e.g.*, 10% or more) in the amount requested in this Interim Application as compared to any budget shared with the SEC. There has not been any increase in the number of Professionals and paraprofessionals billing to the matter during this Interim Application period as compared to any staffing plan shared with the SEC. In Quarter Three of 2024, the Distribution Administrator incurred the following fees, costs, and expenses:⁵

Name	Title	Hours
Robert Seiden	Distribution Administrator	15.5
Lauren Elliot	Distribution Administrator's Staff	18.6

⁴ Considering the nature of the invoices and the descriptions of the Distribution Administrator and his team's work, the invoices will be submitted to the Court under seal. A redacted version will be filed on the public docket pursuant to Your Honor's individual practice rules.

⁵ It is worth noting that the Court approved my engagement of the Professionals on September 20, 2024, and therefore, the Professionals' billings are not included in this Interim Application. The Distribution Administrator expects to submit their billings in the next interim fee application.

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Xintong Zhang	Distribution Administrator's Staff	33.6
Olivia Huang	Distribution Administrator's Staff	37.9
Kylie Milliman	Distribution Administrator's Staff	15.9
Katherine Song	Distribution Administrator's Staff	4.6
Lily Dempsey	Distribution Administrator's Staff	3.2
Allen Glenn	Distribution Administrator's Staff	3.0

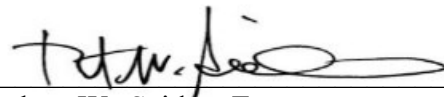
The Distribution Administrator affirms that the above-referenced fees and expenses were incurred in the best interests of the EB-5 Investors, and, with the exception of the professionals denoted in this Interim Application and as approved by the Court, the Distribution Administrator has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the funds, or any sharing thereof. The Distribution Administrator further affirms that his (and his staff's) billings are in compliance with the SEC Billing Instructions agreed to by the Distribution Administrator.⁶

Fund Accounting Report

As I explain above, the Distribution Administrator is currently not in possession of any funds. Under the Court's Appointment Order, the funds are in the Court's CRIS account and will be used upon request. According to the CRIS monthly report dated October 31, 2024, there is approximately \$42,649,961.08 in the Court's CRIS account. A copy of the CRIS Monthly Report dated October 31, 2024 is attached as **Exhibit 4** to this Application. In addition, this is the Distribution Administrator's first Quarterly Fee Application, and no funds have been paid yet. Thus, the Distribution Administrator is unable to provide the Court with a standardized fund accounting report for Quarter Three of 2024. The Distribution Administrator is expected to provide the Court with the standardized fund accounting report in his Quarterly Fee Application for the Quarter Four of 2024.

Please do not hesitate to contact me if Your Honor has any questions or concerns.

Respectfully submitted,



Robert W. Seiden, Esq.

The Court Appointed Distribution Administrator

⁶ A Certification of Compliance with SEC Billing Instructions is attached as **Exhibit 3** to this Application.